

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PAUL A. BERNADIN,

Plaintiff,

- v -

AMERICAN AIRLINES, INC.,

Defendant.
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ORDER

CV-08-1774 (NG)(VVP)

In accordance with the court's direction at the discovery conference held on November 24, 2008, the plaintiff has submitted a statement concerning the fees incurred pursuing discovery matters addressed at the conference to enable the court to assess an appropriate sanction for the defendant's failure to meet its discovery obligations. The specific failure for which the court had announced it would make such an award was the defendant's failure to provide responses to interrogatories timely, despite efforts by the plaintiff to obtain them. In addition to the fees incurred in connection with that issue, the statement of fees includes time spent on other discovery disputes on which the plaintiff did not prevail, and for which fees should therefore not be awarded. Upon careful review of the submission the court finds that the plaintiff is entitled to an award for one-half hour for the preparation of the letter motion on November 11, 2008 and one-half hour for the preparation of the letter dated November 25, 2008 concerning the statement of fees. As for the time spent on November 17 reviewing the interrogatory responses and supplementing the November 11 letter motion, an award is not appropriate because there is no indication that counsel attempted to discuss the various deficiencies with opposing counsel as required by Local Civil Rule 37.3(a). Given that the defendant acknowledged the shortcomings and agreed to rectify them without judicial intervention before the conference on November 24, the supplemental motion would likely not have been required if a discussion had been initiated. The time spent on November 17 researching the deposition location issue is not compensable as the plaintiff did not prevail on that issue. Finally, as for attendance at the conference on November 24, since that hearing was necessary to address the deposition location issue, which was the issue principally discussed, and might not have involved the interrogatories at all if a telephonic discussion about them had been held between counsel before the supplemental motion was made on November 17, an award of fees is not warranted.

Accordingly, the defendant shall compensate the plaintiff in the amount of \$350 for one hour of time spent by counsel as set forth above. *See* Fed. R. Civ. P. 37.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
December 10, 2008